

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

KYLE STECHERT, ET AL.,	.	No. 2:17-cv-00784-KSM
Plaintiff,	.	United States Courthouse
v.	.	601 Market Street
THE TRAVELERS HOME AND	.	Philadelphia, PA 19106
MARINE INSURANCE COMPANY,	.	October 25, 2021
ET AL.,	.	1:10 p.m.
Defendant.	.	(Courtroom 15B)
• • • • •	.	

MOTION HEARING
BEFORE HONORABLE KAREN S. MARSTON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 (Call to Order of the Court at 1:09 p.m.)

2 JUDGE KAREN S. MARSTON: Good afternoon, everyone.

3 ALL: Good afternoon, Your Honor.

4 THE COURT: All right. So, can we -- Mark, you think
5 we can move that TV a little bit --

6 THE CLERK: Sure.

7 THE COURT: -- because the angle -- because I can't
8 really see them. Now, I -- yeah. Yeah. But that's -- they
9 may still -- can you guys see okay?

10 MR. BROOKS FOLAND: That's fine, Your Honor. Yeah.

11 MR. RICHARD M. OCHROCH: Yes.

12 THE COURT: All right.

13 MR. OCHROCH: We also have individual screens, Your
14 Honor.

15 THE COURT: Oh, they have individual screens. I
16 get -- I get the whole thing then.

17 (Laughter)

18 THE COURT: Oh, if I -- oh, okay, that's even better.
19 You may all be seated.

20 Oh, okay. Great. We didn't have that last time.
21 Improvements.

22 THE CLERK: Yes.

23 THE COURT: Are you on, Mark?

24 THE CLERK: Yes, Your Honor.

25 THE COURT: Okay. All right. I am calling the case

1 of -- and how do we pronounce it, Stechert?

2 MR. OCHROCH: Stechert.

3 THE COURT: Stechert, et al vs. The Travelers Home
4 and Marine Insurance Company, et al. It is civil docket 17-
5 784.

6 Let me start -- counsel, will you identify
7 yourselves?

8 MR. OCHROCH: I am Richard Ochroch, Your Honor. I am
9 co-counsel to the Plaintiff. Sitting to my right is James
10 Barry, who is also co-counsel. On the screen is Marc
11 Weingarten, also co-counsel. Marc and James are from the Locks
12 Law Firm. My law firm is Richard M. Ochroch and Associates.
13 Behind James Barry is my partner, Brett Benton, who is also co-
14 counsel.

15 THE COURT: Okay.

16 MR. OCHROCH: And my colleague and associate, Andrew
17 Ochroch. And we --

18 THE COURT: I'm sorry, who is the colleague and
19 associate?

20 MR. OCHROCH: Andrew Ochroch.

21 THE COURT: Okay. Now, is there somebody who is
22 not -- thought they were on the docket that's not on the
23 docket?

24 MR. OCHROCH: Brett Denton.

25 THE COURT: Okay.

1 MR. OCHROCH: Don't know why. He's been an integral
2 part of the case for five years, but --

3 THE COURT: Okay. Well, just make sure he gets added
4 to the docket after today then.

5 MR. OCHROCH: Okay. We can do that.

6 THE COURT: All right. Counsel?

7 MR. FOLAND: Good afternoon, Your Honor. My name is
8 Brooks Foland. I represent Travelers Insurance along with my
9 co-counsel appearing by -- by video, Mark Hanover, from the
10 Dentons Law Firm out of Chicago.

11 THE COURT: Okay. Great. Thank you.

12 MR. FOLAND: Thank you, Your Honor.

13 THE COURT: And counsel on video, it's good to see
14 you. Thank you for being here.

15 MR. MARC P. WEINGARTEN: Thank you, Your Honor.

16 MR. MARK L. HANOVER: Thank you.

17 THE COURT: Hopefully, we don't have any issues with
18 our technology today, so we'll see. Sometimes this works and
19 sometimes it doesn't.

20 All right. So we are here today because this case
21 was transferred to me, and at the time it was transferred to
22 me, I understand that you-all had filed in, I guess, May, if
23 I'm correct -- I think that's correct, a motion for preliminary
24 approval of the class action settlement. So I'm here today for
25 that hearing.

1 Will you please -- would you like to begin?

2 MR. OCHROCH: Yes, Your Honor. Thank you.

3 THE COURT: All right. You may.

4 MR. OCHROCH: May I go to -- to the --

5 THE COURT: You can or you -- would you feel more
6 comfortable going there or --

7 MR. OCHROCH: I think so.

8 THE COURT: -- you're more than welcome to stay where
9 you are.

10 MR. OCHROCH: Well --

11 THE COURT: Okay. That's fine.

12 MR. OCHROCH: -- it's going to be hard for me to see
13 and hear. I think this --

14 THE COURT: Okay. That's fine.

15 MR. OCHROCH: -- might make it a little better. I
16 hope so.

17 Good afternoon, Your Honor, and thank you for
18 scheduling this hearing. As you have just discussed, we are
19 here for Plaintiff's proposed -- for the unopposed preliminary
20 approval of a class action. This is a claims made settlement
21 involving approximately 18,000 insureds of Travelers. This is
22 a case that's lasted five years. As we set forth in the
23 motion, which I'm not going to repeat in its entirety, we
24 believe that the settlement is fair, reasonable, and adequate.

25 THE COURT: And I take it the approximately 18,000

1 are throughout the country, is that correct?

2 MR. OCHROCH: Pennsylvania.

3 THE COURT: They're only in Pennsylvania?

4 MR. OCHROCH: Only in Pennsylvania.

5 THE COURT: Okay.

6 MR. OCHROCH: And, actually, as part of the
7 settlement as -- as you will see, once you enter the
8 preliminary order, assuming you do, the -- the numbers will be
9 updated by Travelers. Right now, we have a computer list of
10 Pennsylvania insureds who are subject to the class of
11 approximately 17,250 -- 250. There will be another -- there
12 will be another run of that data to the date of the preliminary
13 approval, which should take us into the 18, \$19,000 range.
14 They will all by -- by this agreement, they will all be part of
15 the class.

16 By way of very brief background, this case arises out
17 of a serious automobile accident Mrs. Stechert was in with her
18 two minor children on January 16th, 2015. Her car was totaled.
19 She was very seriously injured. Her two children were not.
20 The family had a Travelers policy. It was a typical automobile
21 policy with a typical rental clause, which is sometimes called
22 an -- an Extended Transportation Expense clause or an ETE
23 clause. They invoked that clause and they were given a rental
24 car through Enterprise, who billed Travelers.

25 Significantly, and this is the underlying case, which

1 I'm not going to get into it, because it's in-depth, but the
2 Travelers policy provided that our payment will be limited to
3 that period of time reasonably required to repair or replace
4 your covered auto. Reasonably required is the operative and
5 important language. In part --

6 THE COURT: Up to 30 days, though, right?

7 MR. OCHROCH: With a maximum 30 days.

8 THE COURT: The maximum 30 days, which -- or the --

9 MR. OCHROCH: But -- but that's a policy limitation
10 and there's only one way and one way only for Travelers to
11 provide less than 30 days and that's if they do an analysis and
12 have a conversation as to what's reasonably required.

13 In contradiction to the policy limitation, Travelers
14 issued on January 27th, 2015, a letter that we have called
15 throughout this litigation the rental letter, that I can hand a
16 copy up if you'd like to see it.

17 THE COURT: Do you have it?

18 MR. OCHROCH: I do.

19 THE COURT: It's not part of what -- I don't think I
20 saw that letter.

21 MR. OCHROCH: It's in the -- it's in the package, but
22 I can --

23 THE COURT: Oh, it is in the packet?

24 MR. OCHROCH: Yeah.

25 THE COURT: Okay. If it's --

1 MR. OCHROCH: But I -- I -- I have clean copies,
2 Judge.

3 THE COURT: Oh, it's the one that says five days?

4 MR. OCHROCH: Right. Exactly.

5 THE COURT: Yeah. I've seen it. Yeah.

6 MR. OCHROCH: And we also have one -- it's a form
7 letter from Travelers.

8 THE COURT: Right.

9 MR. OCHROCH: And we have the form, that it's easier
10 to read than the actual letter that Mr. and Ms. Stechert got.

11 THE COURT: Okay.

12 MR. OCHROCH: The operative language is that -- and
13 it's the second paragraph from the bottom. Throughout this
14 process, if your vehicle is determined to be a total loss, your
15 rental will be limited to five days from when your vehicle was
16 deemed non-repairable. That's a breach of the contract and
17 that started the five years of litigation that -- that brings
18 us here today. It will be six years in the first week of
19 January.

20 As a result of that clause and as a result of Mr.
21 Stechert not receiving 30 days of rental, he authorized us and
22 we initiated a class action complaint, which is also part of
23 the documents that you have on January 16th, 2007 [sic].
24 Thereafter, in front of Judge Joyner, while we commenced non-
25 class discovery on January 17th, 2018, Travelers filed a motion

1 for summary judgment, which Judge Joyner granted on May 15th,
2 2018. With Mr. Stechert's permission, we appealed that to the
3 Third Circuit, who overturned that decision on March 15th,
4 2019. The Third Circuit stated, among other things, that the
5 five day limitation is in direct conflict with the limitations
6 specified in the Stechert's policy, which provides for 30 days
7 of coverage in the absence of a determination that it is
8 reasonable for the insureds to obtain alternate transportation,
9 so the case came back to Judge Joyner.

10 We then embarked upon a period of class discovery for
11 about another year. We took several depositions, exchanged a
12 lot of documents. We probably reviewed about 14,000 documents
13 altogether, not all of which were Bates stamped, because one of
14 the areas of contention was who the proper defendant should be.
15 Travelers advocated that the only proper defendant was the
16 entity on the Stechert's policy, which was Travelers Home and
17 Marine. We disagreed and felt that all 28 --

18 MR. JAMES ARTHUR BARRY: 38.

19 MR. OCHROCH: All 38 Travelers entities that -- that
20 sold similar policies in Pennsylvania were related and one was
21 the alter ego of the other and they should all be the
22 defendants. That was a point of contention that we had, which
23 we resolved in the settlement proposal which -- which I'll get
24 to shortly.

25 After the last deposition in -- I'm sorry, Judge, my

1 glasses are -- glasses are fogging, it's making it worse.

2 On March 13th -- March 13th, 2020, we took the last
3 deposition. Mr. Hanover and I looked at each other afterwards
4 and said maybe it's time we sit down and we did. It took a
5 year. Every -- every aspect of this lengthy settlement in
6 front of you, every word was discussed. We had two lengthy
7 sessions with Magistrate Judge Welsh. We spoke to her before
8 the sessions, during the sessions, and after the sessions. It
9 -- it -- it -- we had a -- we had a -- we had a tough road.
10 That resulted, however, in the agreement in front of you that
11 was signed in -- in -- in May of 2020 -- May of 2021. It took
12 a year, but it's signed and it's in front of you.

13 I'd like to go through some of the important parts of
14 the settlement. As part of the settlement, Travelers has
15 included 18,000-plus Pennsylvania insureds, which is all 38
16 companies that we argued should be part of the class. That's a
17 very important part of the settlement talks. That includes
18 everybody that was subject to the same claims procedures that
19 the Stechert's were. Some people received the rental letter,
20 some people were just subject to the same claims procedures,
21 which followed the rental letter, and this includes everybody
22 and that's very important to us.

23 THE COURT: So all 18,000 are people that had the ETE
24 as part of their policy, because you don't have to have ETE,
25 correct?

1 MR. OCHROCH: Correct. They -- they -- they --

2 THE COURT: You pay more to have ETE.

3 MR. OCHROCH: Correct.

4 THE COURT: Correct.

5 MR. OCHROCH: They -- they -- they -- they were
6 insured by Travelers.

7 THE COURT: Um-hum.

8 MR. OCHROCH: They had rental coverage.

9 THE COURT: Right.

10 MR. OCHROCH: Up to 30 days.

11 THE COURT: Right. They had an accident.

12 MR. OCHROCH: And they got in an accident and the car
13 was totaled. That's all -- that's the only qualification
14 for --

15 THE COURT: Okay. So that's --

16 MR. OCHROCH: -- them to be in the class.

17 THE COURT: So you're not dealing with somebody who
18 had a car repair?

19 MR. OCHROCH: Correct. No repairs.

20 THE COURT: So these are all totaled cars?

21 MR. OCHROCH: Right. Who would've been treated the
22 same. Mr. and Ms. Stechert were typical of that, because
23 that's the clause that says, if it's totaled, we get to
24 terminate the rental within five days.

25 THE COURT: Okay.

1 MR. OCHROCH: And that's the operative language
2 that's the center of the lawsuit.

3 THE COURT: Okay.

4 MR. OCHROCH: Those -- those are all people that fit
5 within that class. And, again, it's to be updated, so it will
6 be something more than that.

7 THE COURT: Well, I mean, this isn't really for you,
8 and I know this is, you know -- but the fact is, part of the
9 settlement is that Travelers has agreed to come up with some
10 new language, correct?

11 MR. OCHROCH: Correct.

12 THE COURT: For the rental letter, I suppose?

13 MR. OCHROCH: Correct.

14 THE COURT: And have they started to use that new
15 language?

16 MR. OCHROCH: My understanding -- you -- and you --
17 you have what's sent to you earlier, I think, in camera,
18 correct? Did you get that?

19 THE COURT: Yeah. I have it.

20 MR. OCHROCH: My --

21 THE COURT: Got another question about that, but it's
22 not really for you.

23 MR. OCHROCH: My understanding, they have started to
24 use it, but, of course, nothing prevents them from
25 discontinuing it unless until, respectfully, you sign the

1 preliminary approval. Then -- then they can't change their
2 mind. But my understanding is that Travelers has absolutely
3 ordered everybody to stop using the rental letter. Whether or
4 not they have -- whether or not they have fully implemented the
5 new procedures or they're waiting for your order, I do not
6 know.

7 THE COURT: Okay. But let's assume, and we'll hear
8 more about this in a minute, but if they have started to use
9 it, then you're not going to be increasing, because from
10 certain date on, if they're using the new policy, you're not
11 adding to your numbers of claims is what I'm saying.

12 MR. OCHROCH: That's a good question, Your Honor.

13 THE COURT: Well, I appreciate you saying it's a good
14 question, but to me it's just obvious. I mean, if the policy
15 is in place, then --

16 MR. OCHROCH: I -- I guess if the policy is in place,
17 and if, in fact, they have started to use it, then the cutoff
18 date would be when they started to use it as opposed to your
19 preliminary order.

20 THE COURT: Right.

21 MR. OCHROCH: Okay.

22 THE COURT: Okay.

23 MR. OCHROCH: That sounds fair. That sounds -- and I
24 had not thought of that, but that sounds fair.

25 As part of the settlement, the class -- and this

1 is -- this is -- I can direct you to a page number, but there
2 are four -- four buckets, if you will.

3 THE COURT: One, nine, sixteen, twenty-six range.
4 Eight, fifteen, twenty-five, thirty?

5 MR. OCHROCH: Yes, I think that's correct.

6 THE COURT: \$300, \$200, \$75, \$30?

7 MR. OCHROCH: Correct.

8 THE COURT: Tell me about those.

9 MR. OCHROCH: Okay.

10 THE COURT: So if I had -- what you're saying, I had
11 a total loss and I got a rental car somewhere between one and
12 eight days, is that the idea?

13 MR. OCHROCH: Correct.

14 THE COURT: And that's what I actually did get from
15 Travelers?

16 MR. OCHROCH: You got -- you would get -- Travelers
17 gets a credit for -- what -- what you got and what they paid
18 for, they get a full credit for.

19 THE COURT: Travelers does?

20 MR. OCHROCH: I beg pardon?

21 THE COURT: Travelers gets a full credit?

22 MR. OCHROCH: I'm sorry, Judge.

23 THE COURT: Travelers gets the full credit?

24 MR. OCHROCH: Travelers.

25 THE COURT: Okay.

1 MR. OCHROCH: What did I say?

2 THE COURT: All right. Well, just walk me through
3 it.

4 MR. OCHROCH: Okay. Okay. Travelers gets a credit
5 for that, which means that the people were -- were deprived of
6 the full policy limits and which point they get another \$300,
7 which represents approximately a third of the full policy
8 limits. They get the maximum negotiated settlement.

9 THE COURT: Well, let me just -- let's just talk
10 about this. So if, for instance, I had a vehicle, was insured,
11 I have a total loss. This range of one to eight means that I
12 -- they did pay for a rental car for about eight days, right?

13 MR. OCHROCH: Between one and eight days. Correct.

14 THE COURT: Okay. Despite the policy -- despite this
15 rental policy letter saying five days?

16 MR. OCHROCH: Right.

17 THE COURT: So they went ahead and gave it to me for
18 eight days --

19 MR. OCHROCH: Correct.

20 THE COURT: -- but my insurance said I could have it
21 up to 30 days, and at day eight, I didn't have my new car to
22 replace my total loss, correct?

23 MR. OCHROCH: And they didn't do the analysis
24 required.

25 THE COURT: And they didn't do the analysis required

1 and whatever. So, at that point then, I'm going to get paid
2 \$300, so -- because, technically, I had another 22 days I might
3 have needed to get my new car, right?

4 MR. OCHROCH: Correct.

5 THE COURT: And so if we do the math, 22 times -- if
6 you're saying it's \$30 today, so is it basically about \$660
7 that they might have expended to me, but I'm going to get \$300
8 credit?

9 MR. OCHROCH: That's correct. That's part of the
10 compromise.

11 THE COURT: Okay. And then that's the same -- you're
12 doing the math as it goes forward. And you're saying most
13 people are in that very first category?

14 MR. OCHROCH: That seems -- yeah, we do have those
15 numbers. That's correct.

16 THE COURT: And I think there's like -- there's a
17 percentage in here somewhere that I saw.

18 MR. OCHROCH: Right. Most people in the first two
19 categories.

20 THE COURT: Okay.

21 MR. OCHROCH: Mr. --

22 THE COURT: All right.

23 MR. OCHROCH: Mr. Stechert, interestingly enough, and
24 Mrs. Stechert are in the third category. They got 22 days, so
25 they -- they will get a check for --

1 THE COURT: Well, they're not quite in the third
2 category, because of the incentive award, so we're going to
3 talk about that in a minute.

4 MR. OCHROCH: Okay.

5 THE COURT: All right.

6 MR. OCHROCH: But -- but according to this, they
7 would only get \$75.

8 THE COURT: Okay.

9 MR. OCHROCH: Okay.

10 THE COURT: Because he went back and negotiated with
11 them and said, no, I need the car for longer, and they did go
12 ahead and give it to him for a little bit longer, but it still
13 wasn't enough time --

14 MR. OCHROCH: Correct. He --

15 THE COURT: -- and certainly didn't get to that 30
16 day period.

17 MR. OCHROCH: The underlying testimony was he begged.

18 THE COURT: Okay.

19 MR. OCHROCH: Begged. Repeatedly begged and -- and
20 was very upset.

21 THE COURT: And how long did he get the car, then,
22 for, somewhere between 16 and 25?

23 MR. OCHROCH: Twenty-two.

24 THE COURT: Twenty-two days.

25 MR. OCHROCH: Twenty-two days.

1 THE COURT: Okay.

2 MR. OCHROCH: So, again, this is -- this is money
3 -- Travelers has budgeted approximately 3.4 million dollars for
4 these categories, subject to being increased after the
5 preliminary order is entered and perhaps subject to the
6 reduction that you -- you just brought up, but that money
7 -- the -- the additional people will not be paid from the 3.4
8 million additional money pursuant to this system will be added
9 for the additional people, however many there are.

10 THE COURT: Wait a minute. Run that by me. I don't
11 understand.

12 MR. OCHROCH: Okay. All right.

13 THE COURT: What is -- additional people from this
14 approximate 17,000?

15 MR. OCHROCH: No, over and above the 17,000.

16 THE COURT: Right. Over and above the 17,000 is not
17 from the 3.4 million?

18 MR. OCHROCH: Correct. The additional money will be
19 added --

20 THE COURT: Okay.

21 MR. OCHROCH: -- for them pursuant to the same
22 categories.

23 THE COURT: Okay. I understand what you're saying
24 then.

25 MR. OCHROCH: So, in other words, the additional

1 people will not diminish the \$300 due the first category.

2 THE COURT: Okay. And then explain to me what
3 happens with the unclaimed checks, because they're just going
4 back to Travelers?

5 MR. OCHROCH: Okay. First --

6 THE COURT: Because there's no --

7 MR. OCHROCH: Well, it -- remember, there's a claims
8 process.

9 THE COURT: Right.

10 MR. OCHROCH: Okay. People have to answer three
11 questions.

12 THE COURT: Right. I understand.

13 MR. OCHROCH: Either yes or I don't remember.

14 THE COURT: Right.

15 MR. OCHROCH: If they fill out the claims form, they
16 get a check.

17 THE COURT: No matter what, even if they say, I don't
18 remember, because Travelers has already identified them as
19 somebody who falls in one of these categories?

20 MR. OCHROCH: Correct.

21 THE COURT: Okay.

22 MR. OCHROCH: As long as they send the claims form
23 in --

24 THE COURT: Got you.

25 MR. OCHROCH: -- they get a check. If -- if the

1 checks aren't cashed, there's a provision that allows us to
2 have them reissued, I think, within 180 days.

3 THE COURT: Um-hum.

4 MR. OCHROCH: There's a number of -- there's about
5 six best efforts categories in this agreement, which we like,
6 that -- that allows us to -- to, you know, track down people
7 that may have filled it out wrong, had a question, made a
8 mistake. If you don't -- if you don't respond at all, you
9 don't get paid.

10 THE COURT: Right.

11 MR. OCHROCH: And that money remains with Travelers.
12 There's no side -- I -- I -- Mark Hanover, please correct me if
13 I'm wrong, but there's no side cy pres fund in this settlement.

14 THE COURT: That's what -- that's what I saw.

15 Is that correct, Mr. Hanover?

16 MR. HANOVER: Yes, that's correct.

17 THE COURT: All right. And that also goes through --
18 I -- I get the best efforts and all of that, we'll take another
19 try at finding people, new addresses and so forth, but it also
20 goes -- if, for some reason, there's a check out there that
21 never gets cashed, that money goes back to Travelers as well?

22 MR. HANOVER: Yes --

23 THE COURT: Okay.

24 MR. HANOVER: -- Your Honor.

25 THE COURT: Okay.

1 MR. OCHROCH: Okay. And, again, on the best efforts
2 clause, Your Honor, there's -- there's one close -- one -- one
3 quote that I'd like to read to you. This is from ECF 51, page
4 33.

5 "It is the intent of the parties to make all
6 reasonable efforts to include for payment those class members
7 who file a claim or reach out and who are listed in Travelers'
8 records."

9 And there's six similar clauses for various
10 situations, including a clause that allows us as counsel to the
11 class to communicate directly with them.

12 THE COURT: Um-hum.

13 MR. OCHROCH: So Travelers and Epiq, who they've
14 designated as claims administrator, and -- and with our
15 assistance, will get copies of everything. We're all going to
16 make our best efforts to try to maximize the number of people
17 that participate. We don't want people to take the card and
18 throw it in the trash. We can't help it, some will, but we're
19 going to try to minimize it.

20 THE COURT: And how did you pick Epiq?

21 MR. OCHROCH: I beg pardon?

22 THE COURT: How did you pick Epiq?

23 MR. OCHROCH: Travelers has had a relationship with
24 them -- or, rather, Mr. Hanover has a relationship with them
25 and he highly recommended them and we -- we accepted that.

1 THE COURT: Okay.

2 MR. OCHROCH: Okay. The next part of the settlement,
3 which is the most important to Mr. Stechert is the change in
4 claims practices, and that's the Exhibit E that you received in
5 camera earlier today. This is -- this is very important. It's
6 very significant. And, quite frankly, it's very unusual to
7 have an insurance company the size of Travelers to change its
8 claims policies, but they've agreed to do that as part of the
9 settlement. It's designed to prevent again what happened here.

10 So, first and foremost -- excuse me, Your Honor, let
11 me have the exhibit. I have another hard copy, Your Honor.
12 Would you like it?

13 THE COURT: Of Exhibit E?

14 MR. OCHROCH: Yes.

15 THE COURT: No. I have it right here.

16 MR. OCHROCH: Okay. What's significant about this
17 and what's -- well, there's a lot significant about this. For
18 the first time, Travelers is now saying to their insureds,
19 please be aware that based on your policy language, our payment
20 for transportation expenses will be limited to that period of
21 time reasonably required to replace your vehicle. That's what
22 it should have said from the beginning. That's what it'll say
23 now. That's very significant.

24 The -- the second paragraph is equally significant.
25 It sets a beginning and an ending date, which is fine, but it

1 also says, if you are unable to acquire a replacement vehicle
2 before the ending date, please contact me, the adjustor, to
3 determine how much time will reasonably be required to replace
4 your vehicle. That will, in our opinion, result in this
5 situation not happening again.

6 And, of course, the -- the other part of the change
7 in practices is the rental letter is banned from Travelers'
8 files. It's banned from their computers. Everyone has been
9 directed not to use it. We found in the underlying case that
10 some, not all, claims personnel and appraisers had it on the
11 computers and used it. It's been ordered off of everybody's
12 computers. As you may have seen in the settlement agreement,
13 it was a form letter; it was used, it will not be used again.
14 And that's -- that's -- that's -- that's critically important
15 to all of us, particularly the Stecherts.

16 The other significant part of this is there's no end
17 date. The clause in the settlement agreement that -- that
18 provides for this change in practices also provides that
19 unless, until there's a change in Travelers' policy and/or the
20 law, this will continue. They can change the policy language.
21 To my knowledge, so far they have not done so.

22 The other important aspect -- another important
23 aspect is that the policy release is not a claims release, is
24 not a general release. It is a release limited to ETE rental
25 benefits only. So personal injury benefits, liability

1 benefits, UIN benefits, none of that will be affected by this.

2 Time line. I'd like to talk about the time line a
3 little bit, Judge, because it's -- it's -- it's necessarily
4 complicated. The schedule by which the claims will be
5 submitted and paid is contingent upon the dates of the
6 preliminary hearing order and the date of -- and the scheduling
7 of the final hearing. Those -- everything else works off of
8 those dates. So, for example, and only by example, if -- if
9 you entered the preliminary order today, that triggers an
10 obligation from Travelers to -- to -- to have Epiq establish a
11 website and a toll free number within 21 days. That also
12 triggers another deadline of 45 days for Travelers to update
13 the list and then within 75 days after that to begin sending
14 the notices to all 18,000, however many numbers it is, members
15 of the class.

16 And those forms, Judge, are Exhibit A and Exhibit C
17 to the motion. Exhibit A is the claim form with the questions
18 we talked about. Exhibit C is the notice that goes with the
19 claim forms. All that goes out in -- in -- in 75 days, which
20 in this case, if -- if your preliminary order went -- went out
21 today, those claim forms would go out January 7th, 2022.

22 In the preliminary -- in the order that we have
23 submitted to you at the top of the package, that we requested
24 that you sign, the date of the final hearing is left blank. If
25 -- what -- what we would recommend, and, of course, it's

1 subject to -- to -- to your discretion. We would recommend a
2 final hearing date of June 3rd, 2022. That means that the
3 final claim -- the claim forms are due within 45 days after
4 that or by July 18th, 2022. And what that means is that if --
5 just by example, if the preliminary order was signed today,
6 people would have a little over six months to review the form,
7 call us, reach out to the website. We could update the
8 addresses, if need be, and we would like -- we would like, if
9 it's okay with you and -- and Travelers, a period of six
10 months.

11 I don't want a situation where -- I don't want people
12 to throw these things out and I want time to be able to reach
13 out to them. I want time for them -- time for them to -- to
14 reach out to us. And I think that six months is -- is a very
15 fair period to -- to -- to do everything we can do to maximize
16 the participation. But that's -- that's -- that's what's
17 interesting and complicated about this settlement. Everything
18 is triggered off the preliminary order and the final hearing
19 date.

20 As I said and I can go through it, there are four or
21 five best efforts clauses; one for deficiency notices, one
22 where people are confused, inconsistent claim forms, uncured
23 default -- uncured forms. We're permitted to communicate with
24 the class members. Epiq will -- will -- Epiq and Travelers
25 will use their best efforts to update the list. And as I said,

1 our -- our goal is -- is to work with Travelers and Epiq to
2 maximize -- maximize -- maximize the -- the amount of
3 participation.

4 As far as other requirements, I mean, again, the --
5 we believe it's fair, adequate, and reasonable. As far as
6 numerosity, typicality, commonality as set forth in the -- in
7 the -- in the motion, I -- I think we've met all three.
8 Clearly have 18,000-plus people. The Stecherts are typical of
9 everyone in the class, except somebody that -- somebody --
10 except that group that you brought up, which should be
11 excluded. And there are common questions of law and fact.

12 It's been five years, bordering on six years of -- of
13 -- of contested, competent litigation. Travelers hires good
14 lawyers. They did -- they did a good job. It's been hard-
15 fought litigation, but with your permission, we think it's time
16 to bring it to an end. You know, accordingly, we would ask
17 that you enter the preliminary order at your earliest
18 convenience and -- and schedule the final hearing on a date
19 that will allow us to -- to get in touch with the -- with our
20 clients as necessary to encourage greater participation. And
21 we do believe the -- we've met all of the fair, adequate, and
22 reasonable standards.

23 THE COURT: I have a few -- are you finished?

24 MR. OCHROCH: Yes. No.

25 THE COURT: I didn't want to interrupt you.

1 MR. OCHROCH: Yes. Yes, I am.

2 THE COURT: All right. So I have a few questions and
3 I will ask. Does -- does Travelers plan on making any argument
4 or are you just going to answer whatever questions I might
5 have?

6 MR. HANOVER: I -- I was prepared to answer any
7 questions the Court may have, Your Honor.

8 THE COURT: Okay. Great. So let me first -- I'm
9 going to deal right now with Plaintiff's counsel.

10 So in terms of -- and I know, obviously, I'll have
11 another chance at this at the final hearing if I get to that
12 point, but I want to talk a little bit about the service fee or
13 the class representative fee; \$20,000 for each seems really,
14 really high to me.

15 MR. OCHROCH: Yes, Your Honor.

16 THE COURT: Can you explain why that would be
17 justified in this particular circumstance?

18 MR. OCHROCH: They spent a lot of time.

19 THE COURT: Well, how much time?

20 MR. OCHROCH: Five years.

21 THE COURT: No. Okay. This has --

22 MR. OCHROCH: They -- they --

23 THE COURT: -- lasted for five years, but they didn't
24 spend 24/7 of five years.

25 MR. OCHROCH: No. No, they didn't.

1 THE COURT: So --

2 MR. OCHROCH: But -- but without them -- we're
3 changing the world a little bit for the best in the insurance
4 world. It's an unusual case. They stuck with us. Mr. -- Mr.
5 Stechert was -- was more active than Ms. Stechert. He read
6 everything that we sent him. He asked good questions. We
7 constantly communicated for five years, and -- and without him
8 we couldn't have done this. And we are helping people that, a
9 lot of whom, don't know that they even needed help. You know,
10 a lot of people if Travelers says you have to return the car in
11 five days, they return the car. They -- they never knew there
12 was a misrepresentation of coverage, which is something that
13 insurance companies should never do.

14 Mr. Stechert and Mrs. Stechert each sat through a
15 deposition. They answered interrogatories.

16 THE COURT: How long were their depositions?

17 MR. OCHROCH: One day for both.

18 THE COURT: All day?

19 MR. OCHROCH: I think all day for both.

20 MR. FOLAND: A few hours, Your Honor.

21 MR. OCHROCH: There was a Third Circuit mediation.
22 Mr. Stechert appeared in person as requested. The case did not
23 settle. He allowed me to file the appeal. You know, his name
24 was on the case that could have been, you know -- some people
25 don't like having their names on cases, particularly cases that

1 are lost. But he -- he believed in the cause and he allowed us
2 to -- allowed us to pursue it.

3 And, Judge, the -- we observed the Rules strictly
4 particularly under Judge Welsh's purview, and we will ask her
5 to write a letter. We spent most of our time negotiating the
6 terms of the settlement before we talked about counsel fees and
7 before we talked about the -- the incentive fees. Thereafter,
8 we then talked about the -- the incentive fees, but because
9 this is -- there's a fee shifting statute here, and this is
10 very important, this money is not coming from the class. Our
11 fees and the Stecherts' fees are separate and apart because we
12 had allegations of bad faith under 8371, which the Third
13 Circuit did not permit us to proceed on. So this money is
14 coming from Travelers' pocket to the Stecherts' pocket. It's
15 not coming from the class members.

16 So under those circumstances, I would respectfully
17 suggest that it's -- it's well-earned. They worked hard, and
18 it's not coming from the class. That's the most important
19 part. And other than that, it's entirely in your hands.

20 THE COURT: All right. And in terms of counsel fees,
21 have you -- can you talk about the lodestar method for me as to
22 the counsel fees?

23 MR. OCHROCH: It will be based upon hours. I have
24 not totaled up the hours in probably the last year. There may
25 be some multiplying factor to it, but we will provide you with

1 detailed time records. We have kept them, and we will provide
2 them and if we think a -- a multiplier is appropriate, we'll
3 make that argument at the time. But everything will -- but the
4 base will be based upon hours, Judge.

5 THE COURT: Okay.

6 MR. OCHROCH: And, again, that's separate and apart.

7 Whatever you do with that, that money does not --

8 THE COURT: I understand.

9 MR. OCHROCH: -- go to the class.

10 THE COURT: Okay. Have there been some other cases
11 like this anywhere?

12 MR. OCHROCH: Yes.

13 THE COURT: Okay. Where?

14 MR. OCHROCH: We had a case like this in the Court of
15 Common Pleas with Mr. Brooks' firm about five, six years ago.

16 THE COURT: ETE?

17 MR. OCHROCH: ETE. To what extent there's a
18 confidentiality agreement, I'm not sure, but there was a
19 similar case. We went through a lengthy certification hearing,
20 and the case settled. We --

21 THE COURT: It was a class, though?

22 MR. OCHROCH: It was a class. There had been similar
23 cases throughout the country, not a lot, over the years. But
24 in Pennsylvania, as far as I know, the only ones that have been
25 brought are the ones that we brought. We also have another one

1 pending right now, again, in State Court in Philadelphia.

2 THE COURT: But it's not ETE total loss?

3 MR. OCHROCH: Same thing, no. Total loss, ETE, car
4 rentals. It's -- it's -- the language at issue is identical.

5 THE COURT: So that case is going to go away if this
6 settlement happens?

7 MR. OCHROCH: I don't know.

8 MR. HANOVER: It's different -- excuse me. It's
9 different insurance carriers, Your Honor.

10 THE COURT: Oh, okay. Okay. Okay. Okay.

11 MR. OCHROCH: Oh, okay. I'm sorry, Judge.

12 THE COURT: Yeah, I was like --

13 MR. OCHROCH: Different insurance company.

14 THE COURT: I was like --

15 MR. OCHROCH: The other two cases were different
16 insurance companies.

17 THE COURT: Okay.

18 MR. OCHROCH: Neither -- none of them were Travelers.

19 THE COURT: Okay. That makes more sense. Okay.

20 And in any of those cases, did the insurance company
21 change their policy?

22 MR. OCHROCH: In the first case, the one five years
23 ago, they did.

24 THE COURT: So it's not that unusual, then?

25 MR. OCHROCH: Okay. Fair enough.

1 THE COURT: I mean --

2 MR. OCHROCH: They -- but they did only after the --

3 THE COURT: Right. I mean, when these things come to
4 light and an insurance company is going to agree to a
5 settlement of 3.4 million, I would think that they don't want
6 to risk it in the future.

7 MR. OCHROCH: That case was also different. There
8 were different -- because all cases are different.

9 THE COURT: Right.

10 MR. OCHROCH: There were different factual situations
11 there, and the settlement -- I can't recall all the details of
12 the settlement, but I know that that insurance company no
13 longer uses the rental letter.

14 THE COURT: And do you know what the incentive awards
15 were in that case?

16 MR. OCHROCH: I do. I just don't know if there is a
17 confidentiality agreement.

18 THE COURT: All right. Well, why don't you go back
19 to your office and check, and if there isn't or you're allowed
20 to tell me that, I would like to know it.

21 (Attorneys confer.)

22 MR. OCHROCH: Yeah, it was -- it was \$25,000 for a
23 single plaintiff.

24 THE COURT: Okay.

25 MR. OCHROCH: Again, paid separate and apart, not

1 from the class funds.

2 THE COURT: Same plaintiffs as in this case?

3 MR. OCHROCH: Oh, no.

4 THE COURT: Okay. I wouldn't think so, but I just
5 wasn't sure.

6 Okay. Then, I mean, how much did you -- in terms of
7 if this were to go to trial -- and I -- I understand that
8 there's -- you know, you think now is the right time to settle
9 this because of the uncertainty and so forth related to
10 everything, and it's been a hard-fought litigation. But what
11 did you think the claims and other similarly situated
12 individuals were worth if this were to proceed to trial? Were
13 you more on the bad-faith angle of this?

14 MR. OCHROCH: The bad-faith angle was certainly a
15 component.

16 THE COURT: Okay.

17 MR. OCHROCH: It certainly was. The -- the -- we
18 would have had a -- part of what appealed to us about this
19 settlement, a big part, was the inclusion of the 38 companies
20 and the 18,000 people.

21 THE COURT: Okay.

22 MR. OCHROCH: And the -- the change in behavior as
23 part of the settlement. If I'm not mistaken, in our other
24 case, the change in behavior was something that occurred
25 because the company, for lack of a better term, after the

1 litigation changed their procedures. It was not a requirement
2 of the settlement in that case. It's a requirement of the
3 settlement in this case, and that's important. So even if they
4 did change it, they -- you know, that's -- they could always
5 change it back. Once you sign the order here, they can't
6 change it back. And that's a big deal to us.

7 THE COURT: Okay. How many of these classes -- but I
8 don't know -- are actually in the Eastern District of
9 Pennsylvania versus Middle and Western?

10 MR. OCHROCH: I don't know. We have their -- we have
11 a printout of --

12 THE COURT: Okay.

13 MR. OCHROCH: -- 70,250 people. We could -- we could
14 -- if we're permitted, we're happy to give you that printout or
15 we can -- we can analyze --

16 THE COURT: That's okay.

17 MR. OCHROCH: -- it ourselves.

18 THE COURT: I just --

19 MR. OCHROCH: But that I don't know.

20 THE COURT: All right. So in terms of the notice, I
21 -- it's long, but it is small print. Do we -- I mean, do you
22 think it -- I don't know. There is going to be a website,
23 right?

24 MR. OCHROCH: Yes.

25 THE COURT: Okay.

1 MR. OCHROCH: And an 800 number.

2 THE COURT: And an 800 number. Okay. How often --
3 when you have these, the 800 number, how often do people call
4 it?

5 MR. OCHROCH: I don't know. We've got a -- we got a
6 few calls in the last one, but not a lot.

7 THE COURT: Yeah.

8 MR. OCHROCH: I would, you know, defer to Mark
9 Hanover on that as well.

10 THE COURT: People dial the 800 number, Mr. Hanover?

11 MR. HANOVER: Yes. I mean, it varies very much from
12 settlement to settlement. My -- my entire practice is
13 defending putative class actions, and the amount that -- of
14 calls depends in -- on the complexity of the settlement, the
15 amount that's at issue, that may be recoverable for putative
16 class members. When you're talking about hundreds of dollars,
17 that -- that often means an increased number of phone calls.
18 And the -- the ease or difficulty of making a claim also is --
19 affects the number of calls that are received. Here, the --
20 this is one of the easiest claim forms that I've -- that I've
21 agreed to. And -- and other people don't use the phones but
22 rather would just use self-service on the website. There's
23 also -- I believe that Epiq has -- you can -- you can contact
24 Epiq through the website that they would setup --

25 THE COURT: Well, since --

1 MR. HANOVER: -- you know.

2 THE COURT: -- you're talking about Epiq, tell me
3 about your relationship with them and how you suggested them to
4 plaintiffs' counsel for the provider in this case.

5 MR. HANOVER: I think it's one of the largest class
6 action administrators in the country. There are a few big
7 names. There was Garden City, which was purchased by Crawford,
8 so now I guess it's known as Crawford, which is the -- one of
9 the big ones. Epiq is one of the big ones. KCC is one of the
10 big ones. There's JND Legal. I have used -- there was Rust. I
11 have used most of them. The -- the one that I've used the most
12 has been Epiq. Some of my clients have actually preferred
13 provider agreements with them. I don't think that Travelers is
14 one of them. Epiq provides litigation support services. They
15 have nothing to do with settlement. This is one of their
16 lines. If you Google them, you can see sort of a website with
17 a whole bunch of different services that they provide. I know
18 that they've done -- this would be one of the smaller class
19 actions that Epiq would -- would ever get involved in, any --
20 with 17,000 or so putative class members. Below this amount,
21 it probably wouldn't make sense to go with Epiq. You might go
22 with a -- a small vendor. I -- I personally have had
23 significant experience with them. And I know that Travelers
24 has and several of my other insurance carrier clients have.
25 We -- we'd be happy to provide you further

1 information from them if you -- if Your Honor would like.

2 THE COURT: No, that's -- I mean, that's helpful.

3 But just -- the only thing that -- the preferred provider
4 agreement, what would that be if you don't think Travelers has
5 that in this case?

6 MR. HANOVER: Oh, well, I mean, so Travelers is --
7 the -- here, the defendant is paying the full cost to the
8 administration.

9 THE COURT: Okay. Right.

10 MR. HANOVER: Which is -- which is common in these --
11 in these types of settlements, Your Honor. So some of --
12 again, I don't think Travelers has it, but some insurance
13 clients use Epiq services for other purposes. They might --
14 they might use them to help manage some of their internal like
15 database -- you know, litigation databases or litigation
16 support things. And there's a procurement department that --
17 one of my clients has a procurement department where they
18 negotiate contracts with all third-party vendors. And one of
19 the vendors that they have is Epiq.

20 And so there's a third-party contract that says that
21 they do any kind of, you know, administration work. Here's the
22 rates that they'll -- that they'll charge or something like
23 that. Again, I'm not aware that -- that Travelers has one. I
24 just point that out to let you know that they're commonly used
25 in the industry.

1 THE COURT: Okay. And will there be -- I mean, I
2 assume there will be a way to fill out the form on the website.
3 Like you don't actually have to --

4 MR. HANOVER: Yes, Your Honor.

5 THE COURT: -- mail the thing back in. You can
6 actually check the boxes -- yeah. Okay.

7 MR. HANOVER: That's correct, Your Honor.

8 THE COURT: All right. you know that in the note --
9 I mean, obviously, there's some fill in the blanks that you'll
10 have to do in this form anyway, but one is that you have Judge
11 Joyner and you'll have to change it to me, obviously. I mean,
12 I don't know. I -- I'm glad to hear that you say this is one
13 of the easiest one that you -- I do think it's fairly easy. I
14 guess the only thing that -- and maybe it's just as I get older
15 I find smaller print harder to read. I was able to read it,
16 but I'm trying to think if I got this in the mail, what I would
17 do with it.

18 MR. OCHROCH: I don't know that the print would
19 actually be that small in the --

20 THE COURT: Okay.

21 MR. OCHROCH: -- final form, Mark. Do you know?

22 MR. HANOVER: No, I -- so what -- at this stage, Your
23 Honor, what you've seen is Mr. Ochroch and me put something --
24 just kind of whip something together between the two of us so
25 that we could show Your Honor the substance of what we have

1 agreed to. If Your Honor approves -- or preliminarily approves
2 the settlement, then Epiq would do a publishing mockup, you
3 know, that would -- where they -- that Mr. Ochroch and I would
4 have to look at that would use this substance, and it would be
5 -- you know, it would -- it would use publishing stuff. We
6 just put the substance into a -- you know, into an
7 eight-and-a-half by eleven piece of paper for you.

8 THE COURT: Okay. Because, I mean, with -- this is
9 getting sent out 75 days from the date of the entry of the
10 preliminary approval, correct?

11 MR. OCHROCH: Correct.

12 MR. HANOVER: Yes. Yes, Your Honor.

13 THE COURT: So I'm not going to see another -- I
14 mean, normally I see whatever is going to get sent out.

15 MR. OCHROCH: We -- we can get a mockup to you ASAP,
16 Judge. Happy to do that.

17 THE COURT: Okay. All right.

18 MR. OCHROCH: We can do that.

19 THE COURT: Okay. And then --

20 MR. HANOVER: Your Honor --

21 THE COURT: Yes.

22 MR. HANOVER: -- what I -- again, if there's further
23 questions, I would be happy to answer them. There is -- there
24 is one comment that I had on something that Mr. Ochroch said
25 that I wanted to address affirmatively.

1 THE COURT: Okay. Go ahead.

2 MR. HANOVER: I -- Mr. Ochroch suggested a final
3 approval -- a final hearing date, I think, in June.

4 THE COURT: Yes.

5 MR. HANOVER: -- which allows a six-month claimant
6 period. I don't -- I've been looking back at the settlement.
7 I -- I think what I -- and I don't -- I don't see that we
8 actually specified the date. Of course, the two of us can't --
9 Mr. Ochroch and I can't tell the Court what date. I mean, this
10 is all up to the Court subject to the -- you know, what the
11 Court wants and the Court's availability. But that would allow
12 -- a six-month claim date is quite long, and people don't
13 normally need that length of time. I don't know that it would
14 actually benefit the putative class members. It would just
15 delay any final payment if the Court issues final approval.

16 I would think that six months from today would give
17 -- if you -- if it was six months from today, I -- doing the
18 math in my head here, it looks like people would have about
19 four months to make a claim. Generally, I -- you know,
20 anything three months or more is acceptable. So my own
21 proposal would be for -- if the Court -- subject to the Court's
22 availability, that we set something in April.

23 THE COURT: Okay.

24 MR. OCHROCH: Okay. We'll -- that's fine with us,
25 Judge.

1 THE COURT: Okay. All right. Well, let's -- all
2 right. Just, I guess, briefly, for you -- I mean, whoever
3 wants to, I mean, I know you took, what, 11 depositions in this
4 case?

5 MR. OCHROCH: Yes.

6 THE COURT: Claims adjustors. I mean, I guess it was
7 focused on, you know, how often they used this rental letter;
8 is that correct?

9 MR. OCHROCH: Right. The depositions started with
10 the claims process. The original set of depositions before we
11 lost the motion for summary judgment was based upon what they
12 did in this particular case. We didn't have -- it was not
13 class-wide discovery. When it came back, then it was
14 class-wide discovery. The procedures, in effect, for
15 everybody, there was a lot of depositions and a lot of -- well,
16 there was a lot of discovery. I don't remember whether we got
17 to the depositions or not. Only the --

18 THE COURT: On the 38 entities?

19 MR. OCHROCH: Pardon me?

20 THE COURT: On the 38 entities?

21 MR. OCHROCH: Yes.

22 THE COURT: Okay.

23 MR. OCHROCH: Yes. I think that may have been when
24 the case settled. So I'd have -- I can look, Judge. I can
25 tell you who everybody is.

1 THE COURT: And did the plaintiff attend all
2 depositions, in -- I mean, obviously, he -- he and she attended
3 their individual ones, but did they attend the other
4 depositions?

5 MR. OCHROCH: No, Your Honor.

6 THE COURT: Okay.

7 MR. OCHROCH: Some of them were out of town, but the
8 answer is, no, they did not.

9 THE COURT: All right. Just give me one minute to
10 make sure I don't have any additional questions. Oh, well,
11 then for Mr. Hanover, do you have a date of when they -- when
12 Travelers stopped -- or started to use the new policy? Because
13 I do -- I mean, do you agree with me, that would be a -- your
14 docu -- there shouldn't be anybody since that date, correct, to
15 add to this?

16 MR. HANOVER: So -- that's right, Your Honor. So
17 what happened was this. This has -- this has been --
18 procedurally, it's been a little bit unusual because what
19 normally would happen in most cases would be that the parties
20 would file for preliminarily -- preliminary approval, and a
21 ruling or -- a hearing or a ruling would occur roughly around
22 the same time. Here, there was -- there was a longer period of
23 time because of various factors. Travelers changed its
24 practices actually before preliminary -- before the plaintiff
25 -- before Mr. Ochroch moved for preliminary approval. The

1 letter -- the rental letter that you have there, the bad rental
2 letter, the one --

3 THE COURT: Uh-huh.

4 MR. HANOVER: -- that is -- that was the instigator,
5 that was -- we attached to -- Mr. Ochroch's motion for
6 preliminary approval was a declaration from Travelers
7 explaining that we have rooted that out and destroyed it and it
8 no longer exists, and we have -- that letter is never being
9 used again. And our practice has been to, you know, orally
10 explain to people how -- you know, how it is that we -- that we
11 do ETE coverage.

12 The new letter, I don't know that that has formally
13 gone into place yet because it was -- we were awaiting approval
14 from the Court. Our practices have definitely changed.
15 There's no doubt that they've changed effective with
16 Mr. Stechert -- with Mr. Ochroch moving for preliminary
17 approval back in May. But at the moment, I think, everything
18 is done orally. I don't think we've started using a new letter
19 until we got approval from the Court.

20 THE COURT: Oh --

21 MR. OCHROCH: And that, I assume, Your Honor, also
22 means that the claims manual itself, it also had a clause about
23 five days, once the car damage was set, has not been eradicated
24 either, I assume, Mark. That's -- that's -- I understand the
25 rental letter has been ordered trashed, but the other parts of

1 the -- of the conduct claims has not occurred yet, including
2 the change in the knowledge guide, or the guide that pertains
3 to Pennsylvania, to our knowledge.

4 MR. HANOVER: So the -- the new letter becomes part
5 of the knowledge guide. There -- to the extent there was any
6 reference to five days in the old knowledge guide, I don't know
7 whether that -- the status of that change. I do know that the
8 practices, that Travelers made affirmative steps to ensure that
9 the practices were changed affirmatively going forward
10 effective when the motion for preliminary approval was filed.

11 THE COURT: Well, that's the declaration that I have
12 on page 85 of 51-1, which is Hal Litvin, is that correct?

13 MR. HANOVER: Yes.

14 THE COURT: Okay.

15 MR. HANOVER: That's right. Mr. Litvin, correct,
16 Your Honor.

17 THE COURT: So, I mean, it seems to -- I mean -- I
18 mean, you guys can discuss this after this hearing, but it
19 seems to me that if Travelers discontinued the use of the old
20 notice and took some affirmative step to notify everyone that
21 they are no longer doing that five-day -- whatever the date of
22 that notification was, then that would be the date that the
23 class, you know, ends, sort of, in terms of who gets added to
24 the class.

25 MR. OCHROCH: We can discuss that, Your Honor.

1 THE COURT: Okay.

2 MR. OCHROCH: We can discuss that.

3 THE COURT: All right. Well, why don't you all
4 discuss that.

5 Let me just make sure. And am -- is -- are
6 plaintiffs receiving -- you said they fall into the third
7 category?

8 MR. OCHROCH: Yes.

9 THE COURT: Are they receiving whatever amount that
10 is and the incentive award, or is -- or are they just getting
11 the incentive award and not getting that?

12 MR. OCHROCH: We have not discussed it. Presumably
13 it would be both.

14 THE COURT: And I guess the way -- I mean, not to
15 upset Travelers at all, but if I'm -- if I'm looking at this
16 correctly, there could very well be people that are going to
17 get some sort of payment from Travelers even though they might
18 not have needed the car past whatever period of time?

19 MR. OCHROCH: Correct.

20 THE COURT: Okay.

21 MR. OCHROCH: That was one reason Travelers very much
22 wanted the claims-made settlement.

23 Your Honor, may I ask a question?

24 THE COURT: Yes.

25 MR. OCHROCH: We're going to work up a notice form in

1 bigger type. Do you want the claim form worked up as well?
2 They go together.

3 THE COURT: Yes.

4 MR. OCHROCH: Okay. Thank you.

5 THE COURT: And I'm just -- I was just looking at it
6 -- that was my perceptive in looking at it. I was like, oh,
7 this -- I'm trying to see how well this is going to work in
8 terms of getting people to respond.

9 MR. OCHROCH: that's a good thing. We just focus so
10 much on the words going back and forth --

11 THE COURT: Right. No, I do --

12 MR. OCHROCH: -- that we never --

13 THE COURT: -- think it's in pretty plain English in
14 terms of understanding. Though, I have to say that I -- it
15 took me a minute to walk my head through why I should get some
16 -- why the I don't remember gets me something. But I
17 understand why it does. I don't know if somebody who reads on
18 first glance is going to --

19 MR. OCHROCH: I hope they pick up the phone and call.

20 THE COURT: In this day of telemarketers, I found it
21 hard to believe I'm going to pick up the phone and call an 800
22 number, but maybe it's just me. But I agree that you're doing
23 best effort in terms of the website, the first-class mail, and
24 an 800 number. I don't know -- other than Instagram, I don't
25 know what else you can do.

1 MR. OCHROCH: I don't know how to use Instagram.

2 THE COURT: But Instagram might work.

3 MR. OCHROCH: I'm afraid of Instagram. I don't know
4 what it is, but -- I know what it is, and I'm afraid of it.

5 THE COURT: You could -- you could target the
6 12-year-olds and say if you're parents have Travelers
7 insurance, make sure they read here.

8 MR. OCHROCH: I don't want to do that.

9 THE COURT: That would certainly be something new.

10 MR. OCHROCH: Don't want to do that.

11 THE COURT: All right. All right. Can you -- I
12 think I'm -- I think I'm finished, but I want to take a very
13 brief break and I'll be right back in in about two minutes.
14 Okay?

15 MR. OCHROCH: Thank you, Your Honor.

16 THE COURT: Thank you, all.

17 MR. HANOVER: Thank you.

18 (Court in recess from 2:08 p.m. until 2:11 p.m.)

19 THE COURT: -- you're going to meet and confer
20 regarding if you can come up with a different -- if there's a
21 different appropriate class -- if it's appropriate, if there's
22 a different class end date other than the date of my
23 preliminary order that I hopefully will be putting in place.
24 And then you also are going to give me, as soon as possible, a
25 markup of the notice and claim form with whatever corrections

1 need to be done. Obviously, there will still be blanks for the
2 hearing dates and so forth. And then I would like -- is there
3 any reason why I couldn't see the deposition transcripts of the
4 plaintiffs? I'd like to have copies of the plaintiffs'
5 deposition transcripts. That will help me down the road, I
6 think.

7 All right. Is there anything else? Because I think
8 you answered my question about the other case. You got a nod
9 from somebody, so you answered that. Is there anything else
10 that I've asked for that anybody thinks they need to get me?

11 MR. OCHROCH: I don't think so. We got to get you --
12 we're going to figure out when the end date should -- what the
13 end date should be. We're going to figure out who should be in
14 the class. We're going to give you mockups of the notice and
15 claim form. And we're going to send you the transcripts of the
16 plaintiffs.

17 THE COURT: Right. Now, in terms of Exhibit E, I was
18 going to ask, to the -- I was under the impression that this
19 might be already -- obviously, you can tell. I was under the
20 impression you might already been using it, Mr. Hanover,
21 Travelers. And if it was, I was assuming that people are
22 getting this, you know. So I was wondering why it needed to be
23 kept confidential. Is there a need to continue to keep this
24 Exhibit E confidential at this point? Oh, you're muted. It is
25 weird, because usually you can see when somebody is muted.

1 THE CLERK: He's still muted.

2 THE COURT: Is he writing us a note and going to hand
3 -- I can't talk.

4 THE CLERK: The old fashion way.

5 THE COURT: Do you know the answer to my question?

6 MR. FOLAND: I --

7 MR. OCHROCH: He is writing a note.

8 THE COURT: See. Host is not allowing unmute. That
9 would be you, Mr. Rafferty.

10 THE CLERK: Let's see what we got here, Judge.

11 THE COURT: That was good. Give him a thumbs up
12 for --

13 THE CLERK: He even wrote backwards.

14 MR. OCHROCH: Did he write backwards?

15 MR. FOLAND: Yeah. That was good.

16 THE COURT: He didn't have to write backwards, right?
17 No. Yeah.

18 MR. OCHROCH: I couldn't see --

19 THE COURT: That would be really impressive.

20 MR. OCHROCH: I couldn't see it.

21 MR. FOLAND: I don't believe they're currently using
22 the -- the new letter, but I'll let Mark answer Your Honor.

23 THE CLERK: There he is.

24 MR. HANOVER: I'm on --

25 THE COURT: All right. Sorry about that, but that

1 was very good. We definitely --

2 MR. HANOVER: Yes.

3 THE COURT: -- liked old school there.

4 MR. HANOVER: Thank you, Your Honor. So -- so I can
5 -- I can understand why looking at that letter you would find
6 there to be nothing confidential about it. What we -- what the
7 company has is a claims adjustment manual that is
8 proprietary --

9 THE COURT: Con -- okay.

10 MR. HANOVER: -- and that it uses that it -- you
11 know, that it's competition sensitive. You know, Travelers
12 believes that good claims service is good business and helps
13 repeat customers and stuff, and they worked long and hard to
14 preserve an entire sort of claims' manual. This will become
15 part of it. I certainly agree with you, Your Honor, that if
16 you look at this there doesn't seem to be anything
17 confidential. And the whole idea is they're going to be
18 handing this letter to people, so it's not exactly like -- you
19 know, like, you know, the nuclear codes or something. But we
20 -- but it would be Travelers' practice to keep the entirety of
21 the manual confidential.

22 THE COURT: So you'd be better off if you actually
23 made it into a letter and gave it to me as a letter.

24 MR. HANOVER: Yes.

25 THE COURT: Okay. Well, I mean, this is only --

1 because I guess this got filed from the docket without a
2 sealing motion, but it's redacted. And I hate to say we have
3 to jump through -- through hoops, but that's what my concern
4 was, whether I have to actually enter a sealing order to keep
5 this redacted.

6 MR. OCHROCH: I'll tell you, unless --

7 MR. HANOVER: So, Your Honor, I believe that the
8 version that was filed was just the redacted version. And then
9 we sent you, via email today, an unredacted version.

10 THE COURT: Right, I know. But the fact that the
11 redacted version was put on the file, I think -- it may make it
12 so I have to agree to that. I mean, I know --

13 MR. HANOVER: Okay.

14 THE COURT: -- that's what you did, but I think,
15 technically, I need to agree.

16 MR. HANOVER: Okay.

17 THE COURT: But let me -- I will communicate with you
18 all and let you know what we need to do. But if it -- if it's
19 something that we could put in a letter format and not -- but I
20 don't know if that would alleviate the concern or not. Because
21 it's probably referenced in here, right, as that?

22 MR. HANOVER: Yeah, I mean --

23 THE COURT: It's referenced so you know what Exhibit
24 E is even if it --

25 MR. HANOVER: Correct.

1 THE COURT: Okay.

2 MR. HANOVER: Correct, Your Honor.

3 THE COURT: All right. Well, we'll follow up if
4 there's anything more that you need to do related to that,
5 okay?

6 MR. HANOVER: Okay. Thank you.

7 MR. OCHROCH: Thank you very much, Your Honor.

8 THE COURT: All right. All right. Thank you, all,
9 for being here today, and good luck to everyone. I'll see you
10 all soon.

11 MR. OCHROCH: Thank you.

12 MR. FOLAND: Thank you, Your Honor.

13 MR. HANOVER: Thank you.

14 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

15 THE COURT: Bye. Thanks for being on Zoom.

16 MR. HANOVER: Thank you. Thank you.

17 (The proceeding concluded at 2:16 p.m.)

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1 **C E R T I F I C A T I O N**

2 I, Donna Morris, CET-1284, court approved
3 transcriber, certify that the foregoing pages 1 to 28 is a
4 correct transcript from the official electronic sound recording
5 of the proceedings in the above-entitled matter, and to the
6 best of my ability.

7 Donna Morris

8 DONNA MORRIS, CET-1284

9 DATE: OCTOBER 25, 2021

10 * * * * *

11 **C E R T I F I C A T I O N**

12 I, Tami S. Mayes, CET-547, court approved
13 transcriber, certify that the foregoing pages 29 to 53 is a
14 correct transcript from the official electronic sound recording
15 of the proceedings in the above-entitled matter, and to the
16 best of my ability.

17 Tami S. Mayes

18 COURT TRANSCRIBER

19 DATE: OCTOBER 25, 2021

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